

## **REMARKS**

### **Examiner Interview**

On March 4, 2008, a telephonic interview was conducted between Examiner Phillippe and Marc S. Hanish, Reg. No. 42,626. The Examiner is kindly thanked for granting this interview. During this interview, M.P.E.P. 702.06(a)(II)(B) was discussed, and specifically how that section prohibits the use of the Gobert reference as a 35 U.S.C. 102(e) reference. The Examiner requested that this argument be put in writing so that his supervisor may review it. This paper reflects this argument.

### **Substantive Argument**

The Examiner rejects claims 1-3, 6, 8-13, 16, 18-20, 23-26, 29-36, and 39-46 under 35 U.S.C. 103(a) as being unpatentable over Fukuda (U.S. 6,549,667) in view of Gobert (U.S. 2002/0080052).

The Examiner rejects claim 21 under 35 U.S.C. 103(a) as being unpatentable over Fukuda (U.S. 6,549,667) in view of Gobert (U.S. 2002/0080052) as noted in the rejections of the claims above, in view of Lee (U.S. 6,763,070).

In the Final Office Action, the Examiner has clarified that the Gobert reference is being applied as a 35 U.S.C. 102(e) reference. The Gobert reference is dated September 24, 2001, but claims priority to a European patent filed on September 27, 2000. The Examiner is relying on the earlier September 27, 2000 date as the priority date as the present application was filed on June 27, 2001.

According to M.P.E.P. 706.02(a)(II)(B):

No international filing dates prior to November 29, 2000 may be relied upon as a prior art date under **35 U.S.C. 102(e)** in accordance with the last sentence of the effective date provisions of Pub. L. 107-273. Patents issued directly, or indirectly,

from international applications filed before November 29, 2000 may only be used as prior art based on the provisions of **35 U.S.C. 102(e)** in effect before November 29, 2000. Thus, the **35 U.S.C. 102(e)** date of such a prior art patent is the earliest of the date of compliance with **35 U.S.C. 371(c)(1)**, (2) and (4), or the filing date of the later-filed U.S. continuing application that claimed the benefit of the international application.

Thus, the 35 U.S.C. 102(e) date of Gobert is the earliest date of compliance with 35 U.S.C. 371(c)(1), (2), and (4) or the filing date of the later-filed U.S. continuing application that claimed the benefit of the international application. This date would be September 24, 2001, which is after the filing date of the present application. As such, Applicant maintains that the Gobert reference is not a valid prior art reference for the present application, and respectfully requests that this rejection be withdrawn.

It should be noted that this argument was raised in Amendment F, but was never addressed by the Examiner, hence the need for a response after Final Rejection.

Applicant believes that all pending claims are allowable and respectfully requests a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully submitted,  
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